

Blackbird-Millington Corridor Conservation Area Plan

Strategic Actions for Protection of Land and Water Resources

Strategic actions are the on-the-ground programs and activities that were developed to achieve the conservation objectives for the Corridor. They were created and refined via two technical team workshops and numerous focus group and individual meetings, as well as phone/email consultations with team members and other experts. They require leadership and involvement by numerous organizations, agencies, and individuals. Between June and December of 2004 an initial set of over 60 ideas was honed into less than forty carefully crafted strategies with at least some level of input, agreement, and in most cases commitment, from the agencies, organizations or individuals who will implement them.

Strategies were originally developed according to targets, but over time were regrouped and consolidated into five categories according to the type of work involved. An effort was also made to identify the agencies and organizations appropriate to take the lead and supporting roles in carrying out strategies, whenever feasible. Most of these folks were self-identified and played a role in the development of their strategies. However, there are instances where leads were identified by others and the ability or commitment of the lead for carrying out the strategy is uncertain. Most of these strategies involve at least some level of resource commitment from the folks involved, in some cases potentially substantial amounts. Building any additional capacity and resources needed to carry out strategies is assumed to be the responsibility of the lead and supporting entities, with the recognition that there are no guarantees when resources are inadequate. A modest effort was also made to establish goal dates for the most pressing activities, and those that are time-sensitive. Figure 32 is a table identifying all of the strategies (including those described below) and the primary attributes or threats that each was designed to address.

The most insured way of protecting land and water resources for the future is by permanent protection -- via conservation ownership by public agencies or private conservation organizations for the purpose of conservation, or via perpetual easements on privately-owned lands held by public agencies or private conservation organizations for the purpose of conservation. There are currently almost 18,000 acres protected in the Corridor -- through public agency ownership, conservation organization ownership, or agricultural easements with private landowners (through the Delaware and Maryland Agricultural Land Preservation Foundations.) The strategies below (and summarized in Figure 33) are designed to promote and achieve more of this kind of protection.¹

Conservation Easements: Permanent Protection, Private Ownership

A permanent preservation agreement -- often called a **conservation easement** -- is a legal agreement made voluntarily between a private landowner and a conservation organization or public agency. These agreements allow land to be owned and managed privately, while still providing protection from harmful development or other activities that can degrade or destroy important natural or cultural values.

¹ There may be minor differences in the wording of strategies presented in Figure 33 from those presented here, and in the Executive Report. Strategic Action titles/statements were simplified for brevity in the Executive Report, but numbering is consistent.

1. To provide a new incentive for landowners to preserve forestland, create a new program modeled after the Agricultural Land Preservation program to provide for forest protection districts and acquisition of easements on private forestland in Delaware.

In response to the need to protect forests, and the success of the Delaware Agricultural Land Preservation Program at protecting farmland, the Delaware Forest Service (a division of the Department of Agriculture) will propose a similar program for purchasing easements from forest landowners. (See sidebar below.²) This program can be most easily established by modifying the law that governs the existing farmland program via legislation created and supported by the Forest Service, ideally in the 2005 Legislative session.

The details of legislation have yet to be completely worked out as of the time of this report. However, some key aspects of the program that have been discussed include:

- A competitive bidding system/process similar to the existing system for farmland but tailored to forests;
- Provisions to allow local governments or non-governmental organizations to contribute value for priority properties, such as those with streams, wetlands, or coastal plain ponds;
- Elimination of the transfer tax on transactions and elimination of the property tax on protected woodlands; and
- The requirement of forest management plans, which will be based on landowners' objectives, which can include the management of forests for maturity and biodiversity.

The Delaware Forest Service is the clear leader for this strategy, and is committed to developing legislation, building a coalition of support for its passage in the Legislature, and getting the program up and running. The Nature Conservancy, the Delaware Nature Society, other nonprofit organizations and citizens will play an important role by providing input on legislation and by advocating for its passage in the House and Senate. Once the program is up and running, The Forest Service, The Nature Conservancy, and other organizations will all play a role in promoting the program to landowners in Corridor priority areas, and working with those landowners to apply for the program. Local governments and conservation organizations may also have the opportunity to contribute funding toward priority projects in the Corridor to help make those projects' bids more competitive.

Beyond the establishment of this new program, the Delaware Forest Service will lead the effort to a secure long-term funding source for the program, one that is not in conflict with other competing funding needs. In doing so, they may consider creative alternative sources of funding for this purpose, like a forestland conversion tax – a tax for converting forest to development, where the pool of funds collected provide the revenue to buy easements.

The Delaware Agriculture Lands Preservation Program

This voluntary program was formed in 1991 to protect land for agricultural purposes. There are two components to the program:

First: Landowners join by creating an Agricultural Preservation District of at least 200 contiguous acres and agreeing not to develop for 10 years in exchange for tax benefits, right-to-farm protection, and the opportunity to sell a permanent agreement not to develop to the state.

Then: Landowners can apply to sell a permanent preservation agreement; factors like price, quality of soils, significant agricultural infrastructure, and historical environmental significance, are considered in the state's selection process.

² *Farmland Preservation in Delaware*. (n.d.) Retrieved December 13, 2004 from <http://www.state.de.us/deptagri/aglands/Indpres.htm>.

2. To maximize protection in the Corridor, coordinate the efforts of all land-protecting organizations who can play a role in permanent protection of priority areas on private lands (forests, riparian buffers to streams, marshes, coastal plain ponds, and contributing scenic roadways and agricultural areas) by using conservation easements, purchases, and bargain sales strategically and in places appropriate to each.

There are many different organizations or agencies with the capacity to protect land in the Corridor -- through fee ownership or conservation agreements (easements) with landowners. These include The Nature Conservancy, the Delaware Department of Natural Resources and Environmental Control (multiple divisions/departments), the Delaware Department of Agriculture Forest Service, the Delaware Agricultural Land Preservation Foundation, the Maryland Agricultural Land Preservation Foundation, the Conservation Fund, the Delaware Nature Society, the Eastern Shore Land Conservancy, Delaware Wildlands, each of the three counties, and possibly others. But many of these entities service a larger area, and need to know more about the important resources in the Corridor, and where, in particular, they can focus their efforts to help landowners protect these important resources.

As the facilitator for the planning process, The Nature Conservancy will share this plan with each of these entities and request that each identify the priority areas where they can contribute to protection. The Nature Conservancy will also host a meeting(s) with these other land-protecting entities to identify the contributions each can make, and to look for any gaps and how they might be filled or otherwise addressed.

The Nature Conservancy will also share this plan with the counties and the Delaware Office of State Planning Coordination so that those entities can work to establish the Corridor as a priority for protection in current or future plans and protective ordinances, and as a Delaware State Resource Area. One suggestion that has been made is for the New Castle County Land Use Committee to discuss ways to revise the “Suburban Reserve” zoning terminology to make it clearer that conservation is the goal for these areas, and that they are not simply waiting in the wings to be developed. All three counties can take a more leading role in Corridor conservation by clearly and specifically identifying and incorporating Corridor lands in their comprehensive plans, which they will be renewing within the next few years.

Once priorities have been established, land-protecting agencies/organizations will need to reach out to landowners in priority areas to talk about the alternatives to development, before it’s too late. By identifying lands with priority coastal plain pond complexes that are not participating in USDA programs, the Natural Resource Conservation Services can help land protecting agencies to focus outreach on properties where coastal plain ponds are not protected by USDA’s “Swampbuster” provisions, and are therefore more at risk. Through these and other ways, land protection agencies must be strategic, focus on priority areas, and offer a variety of conservation options and assistance to Corridor landowners interested in conservation.

3. To provide additional incentives for landowners to preserve forestlands, overlay or combine forest protection agreements with agricultural preservation easements (existing and future) to provide greater forest protection.

Multiple conservation agreements can be overlaid on the same property, for different purposes. The Delaware Department of Agriculture and Agricultural Land Preservation Foundation have been very successful at protecting land by using agricultural easements, and have protected over 3,000 acres of land in the Corridor in this way. An agricultural conservation easement protects farmland, but does not necessarily protect forests. Where there are priority forestlands or other sensitive forested features -- like coastal plain ponds or streams -- within agricultural easement areas, additional protection can be achieved by overlaying forest easements. Overlaid forest easements may be with the Delaware Forest Service, or with a conservation organization like The Nature Conservancy. They can be used to keep the most sensitive areas undisturbed, and to establish guidelines for forest management activity (which could include selected harvesting) in forested areas.

The Nature Conservancy can work with the Delaware Department of Agriculture to develop a means for overlaying easements for more forestland protection, where there is a need. The Nature Conservancy and the Department of Agriculture can identify areas where overlaid or combined protection would be beneficial and feasible and work with those landowners to develop easement agreements that protect forests as well as farmland, in one of these two ways.

The Department of Agriculture can also investigate other ways to provide forest protection in agricultural easements for Corridor priority lands – for example by incorporating forest management plans in those agricultural easements with significant forest resources or where there is a specific need. It can also include information about forest protection options in program literature that is disseminated to landowners, and alert non-governmental organizations like The Nature Conservancy when an opportunity arises with a new or existing applicant to the farmland protection program. The Department of Agriculture, The Nature Conservancy, and others can then work together to negotiate an agreement with the landowner.

4. To enhance incentives to donate conservation easements, amend the Delaware conservation tax credit law to allow for the sale of credits.

Delaware has a conservation tax credit for landowners who donated land or easements for conservation purposes. The tax credit allows landowners to take the value of their donation off their bottom line for taxes (with some restrictions.) However, some landowners don't have enough taxable income to fully use the amount of their credit. To help these landowners, The Nature Conservancy and others can work with the state legislature to change the tax credit law in order to make the credits saleable so that landowners who cannot use the credit themselves could sell it on the open market to someone who could. Changing the law will require legislation and the support of residents in order to be successful, but there is at least one model for the kinds of changes or provisions needed – Virginia has had a saleable tax credit for a couple of years, and could be a model to use in redesigning the conservation tax credit incentive and/or for avoiding potential pitfalls of this kind of program/incentive.

The State of Maryland also has an income tax credit for conservation donations -- the Maryland portion of the Corridor could also potentially benefit from making this tax credit saleable. Given the size of the state and the relatively small area that is included in the Corridor, additional investigation would be required to determine whether or not the political will exists to change the Maryland conservation tax credit to make it saleable. However, this is a strategy that deserves exploration by conservation agencies and organizations in Maryland.

5. To improve or create new incentives for landowners to preserve forestland, expand opportunities for property tax relief for forest landowners.
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Delaware has two existing ways of providing tax reductions to forest landowners: The Farmland Assessment Act, and the Commercial Forest Plantation Act. The Farmland Assessment Act reduces the property tax burden of owners of land devoted to agriculture, horticulture, or forestry. It reduces county property taxes by basing them on the agricultural, horticultural, or forestry use value, instead of the most profitable use value. Eligible properties must be over 10 acres and must demonstrate revenue of \$2,000 over 2 years, and benefits do not extend to farmers once they go into retirement. The Commercial Forest Plantation Act eliminates, for 30 years, the property tax burden of owners of commercial forest plantations who qualify, which requires an approved forest management plan. Eligible properties must be at least 10 acres and must have enough quantity/quality of forest growth to assure that a stand of merchantable timber will develop (this means no orchards, or ornamental forests.) Maryland also has a preferential tax assessment for woodland. The Nature Conservancy, the Department of Agriculture, and others, must make an effort to provide information to landowners of priority forested parcels regarding these means of property tax reduction and how they can enroll. In particular, outreach is needed to key Corridor forest land owners regarding the Farmland Assessment Act and the option of meeting its revenue requirement by demonstrating "potential value" in the form of a letter from the state forester.

Each of the Delaware Acts were designed for forest landowners who manage timber for economic benefit, and thus have certain limitations that can make it difficult for some forest landowners to utilize. The Commercial Forest Plantation Act's quantity and quality requirements prevent smaller landowners from qualifying. The Farmland Assessment Act's requirement for revenue generation may prevent forest landowners who don't timber often or at all from entering into it. To provide tax relief for landowners interested in forest conservation, the creation of a new mechanism would be ideal, and could be explored by The Nature Conservancy and others by working with the Department of Agriculture. If the creation of a new mechanism is not feasible, one alternative might be to modify one of the existing Acts. However, this alternative would require legislation and the Delaware Department of Agriculture is not likely to support changes to the current acts. The Farmland Preservation Act, in particular, has been heavily politicized in the past and trying to change it could open it up to other unwanted changes and criticisms. Given these conditions, pursuing this alternative must be approached very carefully and only after investigating and weighing its potential benefits (how much the changes would actually benefit landowners in the Corridor) against the costs involved in creating and passing new legislation. If there is a state-wide tax re-assessment, that would be the most opportune time to consider making changes to one of the existing Acts.

In Maryland, there is a tax credit for landowners who have Maryland Agricultural Land Preservation Foundation (MALPF) easements. During the last Kent County, Maryland comprehensive planning

process, there were some efforts to extend the tax credit benefit to MALPF districts, in addition to easement areas. The expansion of these benefits should be revisited at the next possible opportunity, during the next comprehensive planning process or sooner.

In New Castle County and Kent County, Delaware, there is some question about whether or not the value-reducing effects of easements are recognized by county assessors, and property taxes reduced accordingly. The Nature Conservancy will work with assessors in New Castle County on recognizing value reductions and seek property tax exception or reduction for forest lands conserved by easements.

<p>6. To increase the pool of <i>federal</i> funds available for land protection in the Corridor, support the Forest Legacy program, the Delmarva Conservation Corridor, and other relevant federal programs.</p>
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There are several federal programs through which funding can be made available for land protection and restoration efforts in the Corridor. These include USDA Farm Bill programs, like the Delmarva Conservation Corridor and farmland preservation program (used to match Agricultural Land Preservation Funds in Delaware and Maryland), which can provide funding for agricultural land protection and restoration and other kinds of support for agriculture, if funded by Congress to do so.

These also include USDA Forest Legacy program, which provides competitive grants to forest conservation projects in designated areas. Since the Delaware portion of the Corridor is a designated Forest Legacy area, the Delaware Forest Service can cultivate, develop, and submit proposals for Forest Legacy funds, if there is a competitive project opportunity in the Corridor. Some elements that make projects competitive include large forested area, lands adjacent to state forest lands, areas where protection would help endangered species, and projects that demonstrate interstate collaboration. It will be challenging, but the Delaware Forest Service will work to develop a competitive project from the Corridor, undoubtedly involving multiple parcels. Landowner participation in Forest Legacy is voluntary, so cultivating a competitive project will depend on the willingness of landowners to work with the Delaware Forest Service. Getting the Maryland portion of the Corridor designated as a Forest Legacy area (building on the Delaware area) would be a beneficial contribution to this effort by the Maryland Department of Natural Resources.

The Nature Conservancy, the Delaware Nature Society, residents and others can also advocate for increased funding for federal programs that could fund protection efforts in the Corridor, including: the USDA Forest Legacy program, the USDA Farm Bill programs and the Delmarva Conservation Corridor, and National Oceanic and Atmospheric Administration's (NOAA) programs for funding forest and estuarine land acquisition.

7. To increase and improve the pool of *state* funds available for land protection in the Corridor, amend or create new state open space funding sources.

Delaware provides (or could provide) funding for the permanent protection of farms and forests through the Open Space Council (with guidance/assistance from the DNREC Division of Parks & Recreation Natural Areas program), the Green Infrastructure program, the Agricultural Land Preservation Foundation, and the Department of Transportation. The Nature Conservancy and others can advocate for increased funding for these programs and designation of the Corridor as a funding priority in each. The Nature Conservancy can convene an interagency forum to discuss this plan, its conservation areas, and how different conservation tools could be used to stretch limited protection funds, sharing and presenting information and maps on Corridor priorities to help these programs prioritize the Corridor for funding or other assistance.

Another potential tool for conservation funding in Delaware is using a referendum and initiative procedure to raise protection funds. Unlike many other states, Delaware's law does not currently allow a public-initiated vote on capital funding. However, there have been efforts by the Delaware Independent Party and others to change state law so that initiating and raising protection funds through state or county referendum is allowed. There has also been discussion about using the current mechanisms (state or county) to initiate referendum for open space protection. Conservation organizations like The Nature Conservancy should monitor, evaluate, and participate in opportunities to expand funds available for open space protection through referendum (which could also apply to county funding in strategy 8 below.)

The State of Maryland also can provide funding for the permanent protection of farms and forests through Rural Legacy and other programs, but funds have been cut dramatically in recent years. The Eastern Shore Land Conservancy and other Maryland non-governmental organizations can explore opportunities for restoring funding to these programs, and establishing the Corridor as an area eligible for use of these funds. The Corridor is currently not a high priority for land protection funding in Maryland, but Kent County, Maryland DNR, and others can explore opportunities for raising the priority of the Corridor for land protection in Maryland.

The Nature Conservancy and other organizations can also leverage state funds by securing matching funds from federal, county, and private sources.

The Delaware Department of Transportation can be a source of funding for land conservation related to transportation planning, and can also explore possibilities under the Scenic and Historic Highways Program and federal DOT corridor management planning/funding that could bring resources to bear in the Corridor.

8. Find ways to increase and improve the contribution of *county* funds to land protection in the Corridor.

Counties in Delaware have, in recent years, recognized the need to contribute to the conservation of farms and forests. New Castle County made a substantial contribution to farm and forest protection a couple of years ago, which has now run out – replenishment of that allocation for farmland and open

space acquisition and focusing the use of those funds on Corridor priority areas is arguably the biggest contribution New Castle County can make to incentive-based preservation of the Corridor.

New Castle and Kent Counties in Delaware can explore new or expanded mechanisms for funding contributions to forestland and farmland protection, like general realty transfer taxes, agricultural land transfer taxes, county bonds, conversion taxes, or others.

Kent County, Maryland already contributes funds (from conversion taxes) to the farmland protection program, but can explore ways to increase that funding and/or increase Corridor eligibility or priority for agricultural land preservation program funding.